



**California Council for Environmental and Economic Balance**

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April 1, 2016

Ms. Lauren Bisnett  
Draft GSP Emergency Regulations Coordinator  
California Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236  
[sgmps@water.ca.gov](mailto:sgmps@water.ca.gov)

**Re: Draft Groundwater Sustainability Plan Emergency Regulations**

Dear Ms. Bisnett:

On behalf of the California Council for Environmental and Economic Balance ("CCEEB"), I appreciate the opportunity to comment on the Draft Groundwater Sustainability Plan ("GSP" or "Plans") Emergency Regulations ("Regulations"). These regulations will provide essential guidance to Groundwater Sustainability Agencies ("GSAs") in preparing the plans.

CCEEB is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

Further, CCEEB notes that although these regulations define the responsibilities and provide critical guidance to GSAs in preparing the plans and do not directly apply to groundwater users, the regulations will be critically important to a host of entities who may rely on groundwater resources for a variety of needs. By establishing the requirements of a GSP, the regulations will shape both local groundwater management and the cost of a GSP. Because the costs of GSP development and implementation will be borne by groundwater pumpers, affected industries will want to ensure Plans are not excessive, costly or overly restrictive to groundwater use. While we support sustainable management of groundwater resources and the intent of SGMA and the GSP regulations, we are concerned that the regulations as currently drafted are too prescriptive and would impose an unreasonable and unnecessary burden on the GSAs and the regulated community.

The following comments attempt to provide further insight in to the various key points CCEEB and its members wish to ensure are made a part of the record. We believe these recommended changes will help reduce that burden and ensure that the GSPs actually are designed to achieve the goals of SGMA.

## **Local Flexibility**

CCEEB strongly supports maximum flexibility to develop plans at the local level based on the judgment and expertise of the local GSAs. Planning at the local level will allow GSAs to rely on local geologists, engineers, scientists, and stakeholders from that basin to develop GSPs and alternative plans to demonstrate sustainability. The result will be Plans that are reflective of the various considerations associated with a basin, versus a one-size-fits-all approach that fails to consider the differences from region to region and even among portions of a particular basin.

## **Standard of Review**

CCEEB supports the “substantial compliance” standard by which the Department of Water Resources (DWR) will review GSPs. This standard helps to address situations where although a GSP is complete, it may not be perfect. We believe this will help ensure an appropriate degree of local flexibility. This flexibility and local authority are critically important as each basin and sections of the same basins have unique characteristics that may require different criteria for establishing sustainability goals.

## **Notice, Communication & Lack of a Sufficient Appeals Process**

We support expanding notice and communication requirements for impacted water users, especially those that will bear the impact of potential fees or pumping restrictions under GSPs. Although SGMA requires stakeholder engagement, the regulations lack clarity on the level of engagement, opportunity for meaningful challenge of individual GSA approaches, and assurances that those subject to management under a GSP will be notified ahead of final decisions being made that will impact their access to critical water sources.

## **Potential Conflict, Duplication of Existing Regulatory Programs and Authorities**

The regulations should be clarified to ensure GSAs do not supersede, duplicate, overlap or conflict with existing regulatory programs and authorities. As currently drafted, the regulation fails to acknowledge and defer precedence to existing regulatory programs and authorities granted other state, federal and local agencies for the management of activities that may be tied to or related to groundwater resources and their use. By our estimation, without explicit clarification, GSPs could very well be developed with sustainability goals, water budgets, minimum thresholds, and measureable objectives that result in duplicative, overlapping, unnecessary and even conflicting GSP provisions. Failure to provide clear guidance on this point could result in GSAs in conflict with or duplicating regulatory authorities at the US Environmental Protection Agency; State and Regional Water Boards; the Department of Toxics Substances Control (DTSC); the Division of Oil and Gas and Geothermal Resources (DOGGR); and the Department of Fish and Wildlife (CDFW).

As examples of the potential for duplication and need to avoid unnecessary requirements as such in the GSPs, the State and Regional Water Boards have regulatory authority over water quality; the Department of Fish and Wildlife has regulatory authority over fish and wildlife resources; the Department of Conservation’s Division of Oil and Gas and Geothermal Resources (DOGGR) has regulatory authority

over subsurface oil and gas operations; the Department of Toxics Substances Control (DTSC) has regulatory authority over hazardous waste; and more.

To the extent that existing regulatory programs govern areas of focus and interest by the GSA, it is not necessary to duplicate regulatory requirements that are already in place. Instead, GSAs should be required to coordinate with these agencies and incorporate their regulatory determinations without adoption of additional, duplicative and possibly inconsistent regulatory requirements. A lack of explicit clarity in the regulations on this issue could force a regulated entity to have to choose between agencies and who takes precedence relative to compliance requirements. Further, a lack of clarity on this point could result in GSAs endorsing requirements that are vested with legal authority in other agencies. Some regulatory agencies have explicit, sole jurisdiction which could open GSAs to challenge should they exceed and overlap such regulatory authorities granted other agencies.

### **Scope of Groundwater Resources under the Sustainability Plans**

Overall, SGMA was intended to focus on the sustainability of groundwater for water supply purposes. In this regard, it should be clarified in the regulation that not all groundwater resources are acceptable for such purposes. GSAs may wish to evaluate the various types of water at the outset of developing their GSPs; however, water sources that do not and are not expected to contribute to SGMA's groundwater sustainability goals should not be included in establishing the sustainability criteria for the basin. It is typically the case that these types of water sources are associated with activities regulated for reasons beyond groundwater supply.

As an example, groundwater in aquifers that exceed 10,000 mg/l TDS does not meet the federal Safe Drinking Water Act's definition of sources of drinking water. Inclusion of such sources of water is not legally feasible, nor is it consistent with the current regulatory schemes associated with activities that oversee, contribute to or impact these sources of non-supply water.

Additionally, much groundwater is of too low quality and hydrogeologically disconnected from water used for water supply purposes, is otherwise designated or set aside for non-water supply uses, or is hydrogeologically disconnected from groundwater suitable for groundwater supply purposes. GSPs should focus on identifying and sustainably managing groundwater resources that are actually suitable and available for water supply purposes.

As such, the regulations should be clarified to focus GSA authority in relation to well spacing, extraction, and other regulatory requirements within GSPs as being limited to water supply wells and water supply extraction activities. Anything beyond this would waste precious time and resources on water sources that do not contribute to a basin's health and overall water supply, confusing and muddying the scope of sustainability measures that may be necessary, realistic and beneficial to address the basin's long-term sustainability for water supply needs.

### **Regulatory Efficiency**

The GSP regulations should recognize or incorporate the regulatory authority and determinations of other agencies, rather than revisiting issues under other agencies'

jurisdiction. Further, GSAs should not be permitted to become umbrella regulatory agencies with authority or the obligation to revisit existing regulatory determinations. The GSA's responsibilities for managing groundwater should not extend to related regulatory programs such as hazardous waste and water quality regulation but, rather, should incorporate the regulatory determinations of those agencies and take account of those existing regulatory programs.

### **Management Areas**

CCEEB further suggests the regulations expand upon the management area concept, explicitly allowing the acknowledgement of geologic, hydrogeologic, environmental and other unique conditions that may justify establishing separate management areas with their own sustainability criteria. This would also include the ability to establish distinct sustainability criteria for those areas. The regulations must be clear that the plan requirements provide maximum flexibility to GSAs allowing them to propose options for identifying and addressing areas that have distinct conditions, including allowance of the development of different sustainability criteria than those for the entire basin.

### **Data**

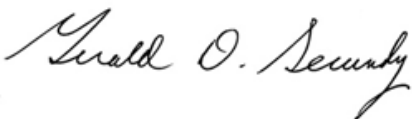
Given the expertise at the local level that GSAs would be relying upon to develop GSPs, the regulations should allow for local data to be evaluated and utilized in GSPs – not merely the water budget data provided by the Department of Water Resources. As currently drafted, the regulations would render existing groundwater management data sources invalid. It may be the case that not all GSAs may have access to locally maintained data, but to the extent that GSAs and/or stakeholders have data to provide it should be permitted to be evaluated by the GSA for inclusion in the development of the GSP components.

### **Evidentiary Standards**

The regulations require certain minimum thresholds and measurable objectives to be supported by clear and convincing evidence. This seemingly introduces a new legal standard that should not be introduced within this regulatory package.

CCEEB appreciates and supports the groundwater sustainability provisions of SGMA. Further, we appreciate your consideration of our comments specifically on the GSP Emergency Regulations. If you have any questions regarding our comments, please contact Dawn Koepke, Project Manager for CCEEB's Water, Chemistry and Waste Project at (916) 930-1993. Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Gerald D. Secundy".

Gerald D. Secundy  
CCEEB President